

CENTRAL INTELLIGENCE AGENCY
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Mr. Arthur F. Van Cook
Director of Information Security
Office of the Deputy Under Secretary of
Defense for Policy Review
Department of Defense
Room 3C260
Pentagon
Washington, D.C. 20301

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Dear Mr. Van Cook:

We share the concern, expressed in your letter of 19 October 1981, for protecting certain information that does not meet the current criteria for classification under Executive Order 12065. In particular, we believe that advanced U.S. technology relating to national security systems should be afforded protection. The proposal to provide this protection by adding "RESTRICTED" as a fourth level of classification, however, raises several questions that we feel should be resolved before we can fully support this approach.


As you know, the 16 October 1981 Information Security Oversight Office (ISOO) draft replacement for Executive Order 12065 enhances the ability of the U.S. Government to protect technological information even without the addition of a new classification level. For example, Section 1-101(c) no longer would require a showing of "identifiable" damage to the national security in order to classify information. Section 1-103 no longer would require that information not be classified if there is reasonable doubt as to whether it should be. Section 1-302 would require explicitly that information be classified if it is an element of what has been referred to as the "aggregate" or "mosaic". And Section 1-401 no longer would require that a maximum duration of classification be set when information is classified.

Given these changes to Executive Order 12065, we believe that the proposal to add a "RESTRICTED" classification could in some cases result in information being provided less protection than it warrants. The new classification level easily could become a "catchall" for information that in many cases should and could be classified Confidential. We believe, for example, that a loss of advantage to the U.S. resulting from the disclosure of technological information relating to the national security would indeed damage the national security, and therefore such information should be classified at least Confidential.

Classifying information "RESTRICTED" rather than Confidential would be of particular concern in light of the proposal that access to such information would require only need-to-know and would not require a security clearance. While "RESTRICTED" information may be protected from public disclosure under the Freedom of Information Act, dissemination controlled only by need-to-know would be inadequate to prevent entry into the public domain. With the positive approach to classification reflected in the ISOO draft replacement for Executive Order 12065, we should be able to protect against loss of advantage to the U.S. through general understanding and increased utilization of classification in the aggregate. This would avoid possibly throwing the entire national security classification system open to question by the inclusion of information that does not require a determination of trustworthiness before granting access.

We are hopeful that the above questions might be resolved through a reformulation of the "RESTRICTED" proposal that would include a requirement for a determination of trustworthiness consistent with the existing three classification levels. Alternatively, we might support an effort to establish a basis for protecting technological information through legislation or a separate Executive order addressing the need to withhold certain unclassified information from public disclosure. We would be happy to meet with you and other interested parties to explore such alternative approaches to avoiding the loss of advantage to the U.S. resulting from premature disclosure of sensitive information.

Sincerely,


Director of Information Services
Directorate of Administration

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TAB C

Add new Section 6.2(b) to read as follows:

(b) In the interest of the national defense, and notwithstanding the provisions of Sections 1 and 4, the Secretary of Defense is authorized to classify information the unauthorized disclosure of which reasonably could be expected to be prejudicial to the national security because it would cause the loss to the United States of a military technological or operational advantage. A classification designation other than as prescribed in Section 1.1 may be applied to such information. The Secretary of Defense shall promulgate regulations, that shall be binding on the agencies, providing that such information shall be safeguarded at a level lower than Confidential.